

**MINUTES
of the
THIRD MEETING
of the
ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS
COMMITTEE**

**August 11, 2005
Vista Grande Elementary School
Rio Rancho**

**August 12, 2005
Eclipse Aviation
Albuquerque**

The third meeting of the Economic and Rural Development and Telecommunications Committee for the 2005 interim was called to order by Senator Bernadette M. Sanchez, chair, on August 11, 2005 at 10:10 a.m.

PRESENT

Sen. Bernadette M. Sanchez, Chair
Rep. Mary Helen Garcia, Vice Chair
Rep. Jose A. Campos
Rep. Daniel R. Foley (8/12)
Sen. Mary Jane M. Garcia
Rep. Dianne Miller Hamilton
Sen. Clinton D. Harden, Jr.
Rep. Patricia A. Lundstrom (8/11)
Sen. Richard C. Martinez
Rep. Kathy A. McCoy
Rep. Andy Nunez
Sen. John Pinto (8/12)
Sen. William E. Sharer (8/11)

Advisory Members

Rep. William "Ed" Boykin
Rep. Ernest H. Chavez
Sen. Dianna J. Duran
Rep. John A. Heaton (8/11)
Rep. Ted Hobbs (8/11)
Rep. Al Park
Rep. Debbie A. Rodella
Rep. Harriet I. Ruiz (8/11)
Sen. John C. Ryan
Rep. Richard D. Vigil (8/11)

ABSENT

Rep. Hector H. Balderas
Sen. Carroll H. Leavell
Sen. Leonard Tsosie

Sen. Ben D. Altamirano
Sen. Phil A. Griego
Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Sen. Steven P. Neville
Sen. Lidio G. Rainaldi

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Lisa Barsumian

Larry Matlock

Guests

The guest list is in the meeting file.

Copies of all handouts are in the meeting file.

Mr. Jim Owen, mayor of Rio Rancho, welcomed the committee to Rio Rancho. He noted that Rio Rancho has 300 square miles of land available for growth and that eventually Rio Rancho will be the largest city in New Mexico. Rio Rancho has the fastest growth rate in the U.S., which is being fueled by in-state migration into Rio Rancho rather than out-of-state growth as may be presumed.

Mr. Jim Palenick, city administrator of Rio Rancho, made a presentation on the new city center that is being developed. The new branding campaign for the city is "Meeting the Future". When Rio Rancho was incorporated in 1981, the population was 10,000. As of August 2005, the population is 68,000 and growing and the city is expected to exceed the population of Santa Fe by year-end. In 2005, 9,000 residents were added to Rio Rancho. During the first six months of 2005, 1,927 building permits were issued and an average of 300 permits are issued monthly. This growth rate has put tremendous pressure on the school system. The growth is attributable to a number of factors, including available land, affordable new housing, a school district with a good reputation, a business-friendly reputation, good collaboration between stakeholders and a local government not afraid of taking risks. The city needs retail and commercial growth in order to improve its local gross receipts revenues, which are only \$800 per capita. The city is being forced to create a downtown commercial center, which will contain an events center/arena, city hall, Class A office space, high-end and specialty retail stores, urban residential units and a digital motion picture studio. Financing is being achieved using \$8 million from the issuance of county industrial revenue bonds, \$35.5 million in revenue bonds issued by the city of Rio Rancho to be paid off from event facility revenue, \$250,000 in state funds for parking and \$1.5 million in city funds. Senate Bill 440, passed in 2005, enables the city to apply a 10 percent surcharge that facilitates funding these projects. Mr. Palenick explained the details of the arena and city hall projects. He explained that Rio Rancho needs recurring gross receipts revenue while new home construction generates nonrecurring gross receipts revenue. He added that the University of New Mexico has expressed interest in acquiring land adjacent to the new city center and the city is looking for a hospital or hospital expansion. A wireless technology (Wi-Fi) company is hoping to install that technology across Sandoval County. The city has enacted an ordinance that will allow businesses to be repaid for their impact fee investments. New Mexico does not have tax increment financing, which is an option Rio Rancho would like the legislature to consider. The city is in discussions with seven national developers. Representative Park expressed his concern over the high traffic volume at the intersection of highways 550 and 528, which Mr. Palenick acknowledged was a concern that light rail and additional highway routes, possibly through the Pueblo of Santa Ana, might alleviate. Representative Nunez asked about the public school capacity and water supplies. Mr. Palenick responded that all Rio Rancho schools use portable buildings and the high school already has 2,800 students in just three grades. With regard to

water, deep wells are very expensive with a cost per well of \$2.2 million. When arsenic treatment is added, the cost increases to over \$4 million per well. Rio Rancho is competing with agriculture for water rights. Representative Garcia commended Rio Rancho on its planning and observed that the city had a lot in common with Las Cruces. In response to a question from Representative Hobbs on property taxes, Mr. Palenick commented that Rio Rancho property taxes are probably a little lower than those in Albuquerque. Representative Lundstrom asked about the city's bond rating. Mr. Palenick responded that it is good and has improved and that the city got good rates on its two bond issues, which he also attributed to lucky timing. In response to a subsequent question about tax increment financing, Mr. Palenick explained that this form of financing has had a good history in other states. It does not burden the community and only taxes added value. With regard to a question about Rio Rancho's approach of limited business regulation, Mr. Palenick explained that impact fees are consistent throughout Rio Rancho, that permit processes could be expedited and that the city wants to provide predictability in its regulatory environment. Senator Harden inquired about water use and landfills, to which Mr. Palenick responded that the city has instituted xeriscaping, reuse and low-flow fixtures and has used one public landfill and one owned by Waste Management. In response to a question about legislative requests, he said that the city would like capital outlay money for transportation funding, approval of tax increment financing, changes to the cumbersome water rights purchasing process and multijurisdictional building inspector certification so that the process can be more efficient. Senator Sanchez noted that Rio Rancho is encouraging growth compared to Albuquerque's west side and that she opposes the approach being used by the city of Albuquerque on impact fees. Mr. Palenick pointed out that the Rio Rancho impact fee has been \$6,790 per residence since 1994. The fee is likely to increase in January 2006 to \$8,500 and may be phased in. The fee does not include any revenue for drainage or schools. Representative Park inquired whether action by the city of Albuquerque, where the impact fee is \$9,000, affects Rio Rancho. Mr. Palenick responded that he could not necessarily correlate the two, but might be able to in three to four months. Homebuilders are stating that they intend to focus on Rio Rancho. Once the fees are comparable, there should be little difference except that there is too much available land in Albuquerque compared to Rio Rancho.

Mr. Tyler van Houwelingen, CEO and founder of Azulstar Networks, Inc., explained his company's plan to install Wi-Fi in Rio Rancho. The company offers high-speed internet access, voice over internet, secure fixed and mobile connectivity, public access channels, security surveillance and intelligent vehicular services. The company is looking to use Rio Rancho as its launching pad for providing service throughout New Mexico where Wi-Fi offers great potential.

The afternoon session was devoted to the Qwest Alternative Form of Regulation (AFOR) and Rural Extension Fund (REF). Mr. Mike Ripperger, telecommunications bureau chief, and Roy Stephenson, general counsel, Public Regulation Commission (PRC), briefed the committee members on the status of the Qwest AFOR and the REF. Commissioner Jason Marks was also present. These witnesses noted that Valor Communications also has an AFOR. Qwest is approximately \$200 million short of the \$788 million investment commitment the company made in the AFOR agreement. Qwest has filed a lawsuit in federal district court asking for relief from the PRC order requiring the investment. Qwest has also filed suit in the New Mexico Supreme Court appealing the same order. Regarding the REF, it is used to reimburse Qwest \$15,000 for providing "plain old telephone service" to new customers who are beyond 1,000 feet

of Qwest distribution facilities. Confusion existed among the committee members over the relationship of the Qwest AFOR and the REF. According to Mr. Stephenson, the legislature directed the PRC to develop an alternative form of regulation for Qwest and meanwhile during the 2005 session, there was discussion about whether other companies should have access to the REF if its purpose is to provide services in rural areas.

Commissioner Marks noted that the PRC staff expects the new AFOR to look different from the original AFOR. In March or April, the PRC heard arguments that changes in conditions should cause the PRC to change the parameters of the existing AFOR. The PRC rejected those arguments after hearing all the evidence and that changing conditions do not justify changing the previously agreed-to investments. Commissioner Marks further explained that the order issued required Qwest to submit a plan of investments to reach the \$788 million target. Qwest told the state that it plans to spend \$570 million. He informed the committee that that morning (August 11) the PRC entered an order stating that Qwest has not provided specifics to date. The Qwest reports will not be in compliance with the investment totals. If Qwest is not in compliance at the end of period 4, which is the fiscal year just ended, the PRC will order Qwest to meet the shortfall. An acceleration of the PRC proceedings is intended to encourage Qwest to live up to the company's commitments. Mr. Marks stated that Qwest must increase its investment and tell the PRC how the company is going to do it. Representative Heaton responded that he is happy that the PRC is looking at that issue and asked if there is money in the bank for the \$200 million and the impact of distributing the money or reducing Qwest revenues on the citizens of New Mexico. Mr. Stephenson responded that the \$200 million is carried on the Qwest books as a liability that it owes. Representative Heaton inquired if Qwest improves its bottom line when it spends the money. Mr. Stephenson responded that it is an engineering decision. The original concept is a \$500,000 credit for hard-to-serve areas. Easy-to-access customers have been served. Even with a \$15,000 subsidy, some potential customers are too costly to serve. Senator Ryan asked whether Qwest will renegotiate its commitment, to which the PRC staff responded that it will be up to the New Mexico Supreme Court to decide if the PRC is within its authority to press the commitment.

Representative Hobbs asked the PRC representatives to define "rural". In response, Mr. Marks stated it is uncertain whether they could and he is proposing a rule on the definition of "rural", where the county would not have a municipality over 50,000. This rule is in response to HB 776. Senator Harden noted that there are some very common definitions for "rural" used by the federal government. It defines "urban", "rural" and "frontier" using the number of people per square mile. Thirteen of the 33 New Mexico counties are "frontier" counties. Mr. Stephenson noted that Qwest's definition of "rural" is any customer beyond 1,000 feet from the company's point of presence.

The next presenters were Qwest representatives Leo Baca and Charlie Marquez. Mr. Baca, in addressing the AFOR, explained that Qwest incurs huge regulatory costs in New Mexico and that consideration of the public interest should also include Qwest. He acknowledged that Qwest is falling \$212 million short of its commitment under the AFOR agreement. There has been a change in circumstances due to the company's loss of landlines to mobile phones. Qwest would rather not refund the money owed and make strategic investments. Mr. Baca noted that since March 2001, the company has invested \$500 million in New Mexico. In addressing the

REF, Mr. Marquez explained that the REF was created in 1987. The terms of the REF have been modified in that it once included providing commercial hookups, so that the entire fund was used one year to wire businesses. Since then, Qwest has been spending \$400,000 to \$460,000 annually as set forth by the PRC. The company has not been able to spend more. It received another PRC order last year to increase spending to \$550,000. The company decided to spend half of the balance of the REF in order to expand service to "rural" customers. However, the REF rules and guidelines do not allow for that expenditure. Mr. Marquez stated that Qwest is going to spend the money and has a plan. Only Qwest is required to pay into the REF. Without the REF, New Mexico faces a digital divide. He added, "Everyone should have access and everyone should pay into it. The fund has outlived its purpose". Qwest intends to "live up" to its liability, but the REF needs to be looked at. Representative Hamilton asked if Qwest is not required to honor its commitment, whether the smaller communities of New Mexico will have DSL. Mr. Baca replied that company engineers are working on a daily basis to deploy DSL, but first they must assess the level of demand. Representative Nunez inquired about expanding service on the Navajo Nation and whether obtaining right of way is a problem. Mr. Marquez noted that the "vast majority" of unserved residents are located on the Navajo Nation and that right of way is a problem. Money was set aside, then used somewhere else. Sacred Wind is proposing buying those customers. Since there is a \$15,000 subsidy per line, the REF would go to every line it took for the held orders. Multiply \$15,000 by the held orders and that is the amount that Qwest is going to put up. Representative Lundstrom inquired about the REF guidelines not allowing for certain expenditures. Mr. Marquez responded that Qwest provides the first 1,000 feet, then there is a cost for the extension. Originally, it was \$5,000 per extension. Now it is \$15,000 per customer. No other phone company is required to pay that much for extending its lines. Mr. Stephenson noted that Qwest has never asked for this to be modified. Representative Lundstrom also asked how many times the REF has been modified. The PRC staff noted that there have been two significant modifications: first, when the subsidy was changed to benefit only residential customers and then when the \$5,000 amount was increased to \$15,000. Representative Lundstrom asked if Qwest has given up on the Navajo Nation. Mr. Baca answered that Qwest serves about 14 chapter houses along I-40 and Highway 550 and that Citizen serves the greater portion. Sacred Wind wants to take over the Qwest portion and has been talking with the Navajo Nation regarding right of way and deploying wireless technology.

Representative Heaton asked about the basis for the appeal based on the Fourteenth Amendment to the United States Constitution. Mr. Stephenson responded that Qwest's argument is that the PRC does not have the authority to make Qwest spend money. Senator Harden pointed out that Qwest says it spends \$15,000, although the expenditure is actually more like a credit. A customer receives service expansion up to a cost of \$15,000, but then has to pay any additional cost, even though Qwest has the money to pay the complete cost. Senator Harden asked if the REF was statutory and was told that it was not. The creation of the REF was prompted by a federal tax cut in 1988 and during the time when Qwest was still under rate-of-return regulation.

The committee recessed at 3:53 p.m.